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Am. Sub. H.B. 96 of the 136th General Assembly (As Reported by Senate Finance Committee)

Rep. Stewart

June 12, 2025

ORSC Recommendation

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Summary of Am. Sub. H.B. 96 (biennial budget bill)

Am. Sub. H.B. 96 (As Reported by Senate Finance) contains a number of provisions relating to the state retirement systems. This analysis details only the provisions of the budget bill pertaining to the state retirement systems. These provisions are:

1) Transfer of Administration of the Public Employees Deferred Compensation Program to the Board of the Ohio Public Employees Retirement System (PERS);
2) Exclusion of Precinct Election Officials from PERS Service Credit;
3) Department of Administrative Services, State Agency, State Retirement Systems, and the ORSC;
4) Withholding of School District Income Tax;
5) SERS Member Exclusion;
6) STRS and SERS Employer "Pickup."

Transfer of Administration of the Public Employees Deferred Compensation Program to the Board of the Ohio Public Employees Retirement System

The Ohio Public Employees Deferred Compensation Program (ODC) is a 457(b) retirement plan available to all Ohio public employees. A 457(b) plan is available for employees of certain state and local government and non-profit organizations. It allows participants to defer tax on voluntary retirement savings. ODC provides a supplemental, elective, retirement plan to participants. ODC is governed by a 13-member Board. This ODC Board is the same as the PERS Board, except that the ODC Board has two additional legislative members (one from the House of Representatives and one from the Senate). 77% of ODC participants are PERS members. H.B. 96 abolishes the ODC Board and transfers the governance and administration of the ODC program to the PERS Board.[1]

There is in existing law and practice considerable overlap between the governance and administration of ODC and PERS. All 11 members of the PERS Board are also members of the ODC Board. ODC currently contracts with PERS for a variety of services, including human resources, mail operations, internet and IT consultation services, and leadership. According to PERS staff, PERS administration of the ODC program will allow the existing ODC staff to focus on administering the 457(b) plan itself rather than the ODC administrative functions.

ODC participant accounts and PERS member accounts will remain, as under current law, separate under the amendment. The amendment is largely an administrative change.

ORSC Recommendation

The ORSC recommend approval of this primarily administrative change to the ODC program.

[1] R.C. 148.02.

Exclusion of Precinct Election Officials from PERS Service Credit

Existing law provides that a poll worker is not a "public employee" for purposes of PERS coverage if the poll worker receives less than $600 per calendar year, or, in a year in which there is more than one primary and one general election (such as 2022), an additional amount not to exceed $400. The poll worker provisions are designed to prevent temporary poll workers from being considered members of PERS, which would result in them receiving service credit and providing employee and employer contributions to PERS. This policy position was referenced by the ORSC in its approval of the changes made in 2022 that added the additional $400 limit. Due to increases in poll worker pay, these amounts would need to increase over time, but existing law does not include a mechanism to increase those amounts.

The "As Reported by Senate Finance" version of the bill excludes from the definition of "public employee" a person "who is appointed to serve as a precinct election official under section 3501.22 of the Revised Code and received compensation for that service under section 3501.28 of the Revised Code during a calendar year."[2] As a result, this type of temporary service as a poll worker would not be covered under PERS and there would be no need to periodically increase pay amounts under law.

ORSC Recommendation

The ORSC recommend approval of the provision that would remove precinct election officials as "public employees" for purposes of the law governing PERS to resolve this long-running issue.

Department of Administrative Services, State Agency, State Retirement Systems, and the ORSC

The Revised Code includes a number of provisions that apply to "state agencies." "State agency" under R.C. 1.60 excludes the state retirement systems (and ORSC). Because neither any of the retirement systems nor the ORSC are a "state agency," they are not directly administered by the Department of Administrative Services (DAS). This separates the *administration* of the retirement system trusts and the ORSC from the executive branch of state government.

A prior version of H.B. 96 included a definition of "state agency" that would have explicitly included the state retirement systems and the ORSC.[3] This would have blended the administration of the retirement systems and ORSC into DAS.

[2] R.C. 145.012.

[3] R.C. 125.184.

ORSC Recommendation

The "As Reported by Senate Finance" version of H.B. 96 incorporates a recommendation of the ORSC to remove amendments to R.C. 124.184 that would have included the state retirement systems or the ORSC as a "state agency."

Withholding of School District Income Taxes

Under current law, an income tax withholding mechanism exists for benefits paid from the state retirement systems. H.B. 96 includes a provision that would authorize a retirement system benefit recipient to request that a state retirement system withhold school district income taxes in addition to state and federal tax withholdings.[4] This would be effective for the January 1, 2027, tax year. This analysis addresses administrative issues identified by the state retirement systems related to this provision.

According to a majority of the retirement systems, implementation of the income tax withholding provisions of the budget bill will have administrative expenses. The increased expenses will be for necessary upgrades to existing computer systems or requiring staff to manually make the withholding calculations. There is uncertainty on the cost impact of the bill as the income tax withholding is an elective choice made by the benefit recipient. There are currently 188 school districts in Ohio that have income taxing authority.

The "As Reported by Senate Finance" version includes changes recommended by the ORSC. Subsequent to the ORSC approving those recommendations, there has been additional administrative concerns related to members properly notifying the system of their school district, but ORSC staff note that the current version of H.B. 96 does include the minimum administrative remedies recommended by the ORSC at its May 8, 2025, meeting.

ORSC Recommendation

The "As Reported by Senate Finance" version of the bill includes ORSC recommendations on a previous version of the bill amending the following:

1) Delay of the requirements to January 1, 2027 (from previous version of January 1, 2026), to allow the systems time to properly implement the bill's provisions; and
2) Removed tax commissioner rulemaking authority over the state retirement systems.

[4] R.C. 5747.071.

Social Security Coverage of Certain SERS Members

The "As Reported by Senate Finance" version of H.B. 96 makes a significant change to Ohio retirement law by ultimately causing an undetermined number of local government employees to begin participating in Social Security, subject to a modification of the state's "Section 218 Agreement."

The "As Reported by Senate Finance" version of H.B. 96 excludes from membership in the School Employees Retirement System (SERS) any person providing school health services to a child with a disability and who is employed and paid by an entity that has contracted with a school district to provide those services.

These individuals are public employees in Ohio. Under current law and Ohio Supreme Court decisions, any person who performs a service common to the normal daily operation of an educational unit is an employee of the educational unit even though the person is employed and paid by a contractor to perform the service.[5] The "As Reported by Senate Finance" version of H.B. 96 goes beyond simple removal of certain school health service employees from SERS coverage and instead raises the question of how to properly remove a category of public employees from coverage by a state retirement system and instead provide coverage through Social Security, for this is what the amendment is in effect doing.

Background: The Social Security Act

When enacted in 1935, the Social Security Act did not provide coverage for state and local government employees.[6] There were two main reasons for this. One was that many states and municipalities already had retirement systems for public employees. The other was a concern about whether the United States Constitution gives the federal government authority to impose a tax on state and local governments.[7] As a result, state and local government employees did not pay taxes imposed by the Federal Insurance Contributions Act (FICA) on their earnings from government service and were not eligible for Social Security Old-Age, Survivors, and Disability Insurance (OASDI) for that service.[8]

Because some states did not have their own retirement system, however, Congress amended the Social Security Act in 1950 to provide a mechanism for a state to elect Social Security coverage for its public employees.[9] Provided under Section 218 of the Act, and known as a "Section 218 Agreement," a state may voluntarily enter into an agreement under which the federal government covers the state's public employees under Social Security and the employees and their employers are subject to FICA taxes for OASDI. Once made, an agreement to cover a group of employees cannot be terminated or modified to exclude that group in the

[5] R.C. 3309.01 and State ex rel. Board of Education of North Canton Exempted Village School District v. Holt, 174 Ohio St. 55.

[6] "The Social Security Act of 1935," Pub. L. No. 74-271, 49 Stat. 620.

[7] Barbara D. Bovdjerg, United States General Accounting Office, "Social Security: Issues Relating to Noncoverage of Public Employees," GAO-03-710T (May 1, 2003).

[8] FICA establishes the tax used to fund Social Security programs. FICA taxes consist of a 6.2% OADSI tax and 1.45% Medicare tax imposed on both employees and employers.

[9] 42 U.S.C. 418.

future.[10]

Ohio's "Section 218 Agreement" (negotiated in the late 1950s and modified in the 1960s) provides that, with extremely limited exceptions, Ohio's state and local employees do not participate in Social Security.[11] It is possible to modify the state's "Section 218 Agreement" to provide Social Security to state and local employees, but not in the manner proposed in the "As Reported by Senate Finance" version of H.B. 96.

Removal of Certain School Health Services from SERS Membership without Establishing Social Security Coverage

Ohio cannot simply remove state and local government employees from participation in a state retirement system without amending the state's "Section 218 Agreement" to instead voluntarily cover those state or local government positions in Social Security.

As established above, the school health service employees excluded from SERS membership in the bill are local government employees. Members of state retirement systems are generally excluded from Social Security taxes for their state and local government service. Even in the event these individuals are removed from SERS, Ohio's "Section 218 Agreement" does not establish Social Security coverage for these school health service employees.

There is a process for obtaining Social Security coverage for Ohio's state and local government employees, but H.B. 96 does not appear to undergo that process.[12] Additionally, the amendment incorrectly assumes that select individuals can be removed from a retirement system and instead covered under Social Security. Under federal law, Social Security coverage under a "Section 218 Agreement" is by "coverage group," not as individuals. These federal requirements would likely make the changes under H.B. 96 far broader than is realized.

SERS Coverage Group Exclusion and Section 218 Modification

Social Security coverage may be extended to state and local government employees by group, such as all state employees or all employees of a political subdivision. There are two types of coverage groups: "absolute coverage groups," for which Social Security coverage may be extended without consulting the employees, and "retirement system coverage groups," for which coverage may be extended only through referendum. Because the objective of the "As Reported by Senate Finance" version of H.B. 96 is to exclude certain individuals from SERS membership, this analysis will only discuss the "absolute coverage group" approach.[13]

An "absolute coverage group" is, firstly, composed of employees who do not participate in a state retirement system. In regard to the proposed amendment, Social Security coverage may then be extended, as a group, to all employees of a state or political subdivision engaged in

[10] Federal-State Reference Guide, IRS Publication 963, updated May 2025. Available online at: https://www.irs.gov/pub/irs-pdf/p963.pdf.
[11] Ohio Social Security Administrator David Breckenridge, telephone conversation August 8, 2005.
[12] See Chapter 5 of the Federal-State Reference Guide, IRS Publication 963, updated May 2025. Available online at: https://www.irs.gov/pub/irs-pdf/p963.pdf.
[13] Federal-State Reference Guide, IRS Publication 963, updated May 2025. Available online at: https://www.irs.gov/pub/irs-pdf/p963.pdf, page 38-41.

"performing services in connection with governmental functions."[14] Under federal law, Social Security coverage may be extended to positions in an absolute coverage group ***only by modifying the state's "Section 218 Agreement***." The "As Reported by Senate Finance" version of H.B. 96 does not contemplate doing this.

Ohio has limited experience with modifying the state's "Section 218 Agreement" but federal guidance on "absolute coverage groups" appear broad; therefore, the ORSC's staff are unsure of the size of the absolute coverage group that would meet federal requirements, but they are confident that it would include more than the limited school health service positions specified in the amendment (note that the proposal is limited to (1) persons providing school health services to a child (2) with a disability and (3) who is employed and paid by an entity that has contracted with (4) a school district to provide those services). The only absolute coverage group in Ohio of which the ORSC is aware is Lucas County Recreation, Inc./Mud Hens, Inc.. The fact that the "absolute coverage group" included all employees of the Lucas County Recreation, Inc. does not bode well for the highly limited coverage envisioned in the "As Reported by Senate Finance" version of H.B. 96.

With such limited experience to modifications of the state's "Section 218 Agreement" the ORSC is hesitant to estimate how large the coverage group would need to be to meet the requirements of the Social Security Administration (SSA). The ORSC is concerned that the coverage group could be determined to a broad extent to include all employees of a city school, local school, and exempted village school that engage in these contracts.

The provisions in the "As Reported by Senate Finance" version of H.B. 96 would mark the most significant change to the coverage of Ohio's state and local employees under Social Security since its enactment in 1935. Ohio and the ORSC have consistently opposed expanding Social Security coverage to state and local employees.

Impact on SERS Members

The impact on SERS members removed from the system will be severe. According to preliminary figures from SERS, the change will at minimum impact 600 people. The effect of the change would be to prevent existing members from earning additional service credit, either preventing them from ever retiring under SERS or receiving a severely reduced benefit. The ORSC has previously recommended making changes to the law governing the Ohio & Police Pension Fund (OP&F) in a situation where a handful of members were unable to combine service credit for eligibility purposes.[15] The "As Reported by Senate Finance" version of H.B. 96 has an alarmingly larger impact, with a minimum of 600 individuals subject to the "As Reported by Senate Finance" version of H.B. 96 and a total of **163,350 active members** that could potentially be caught up in the "absolute coverage group."

Unable to earn additional service credit in SERS, members with less than 10 years of service credit would be eligible only for a return of contributions. For those with 10 or more years of service credit, they would be required to wait until age 62 or 67 for a benefit from

[14] Federal-State Reference Guide, IRS Publication 963, updated May 2025. Available online at: https://www.irs.gov/pub/irs-pdf/p963.pdf.

[15] ORSC Recommendation, "H.B. 520 of the 131st General Assembly" (October 13, 2016), available online at: https://orsc.org/Assets/Reports/837.pdf.

earned service credit. Since that service may have occurred 15 to 20 years prior to eligibility, normal inflation will have severely reduced purchasing power of that benefit even before they are eligible to receive it. Under pension reform, varying levels of grandfathering were used to prepare members--this was often years. The "As Reported by Senate Finance" version of H.B. 96 provisions are more substantial than pension reform and would be effective in a number of months.

ORSC Recommendation

Because the amendments to R.C. 3309.011 are directly contrary to the long-standing policy of opposing Social Security coverage of Ohio's state and local employees, are not done with the necessary modifications of the state's "Section 218 Agreement," would prevent a large number of SERS members from retiring from SERS, and would be done without any type of grandfathering of existing members, the ORSC recommend disapproval of all changes made to R.C. 3309.011.

Employer "Pick-up"

In Ohio, both the employee and the employer are required to make contributions to the state retirement system in which they are a member. For employees, STRS requires a 14% employee contribution and SERS requires a 10% employee contribution. The "As Reported by Senate Finance" version of H.B. 96 would prohibit a school district board of education from paying employee contributions to STRS on behalf of a superintendent employed by the school district or to SERS on behalf of a treasurer employed by the school district. These arrangements are often referred to as employer "pick-ups." Note that the bill only prohibits these arrangements if it is done by a "school district board of education" and so would not include all employers under either STRS or SERS.[16]

ORSC Recommendation

The ORSC has traditionally been neutral on this policy position, as long as the system is receiving the required employee and employer contribution. However, as is often the case with changes that may affect existing collective bargaining agreements/employment contracts, should this provision remain part of the bill, the ORSC would recommend delay of the provision to negate any effect on current collective bargaining agreements/employment contracts.

[16] R.C. 3307.27 and 3309.47 of the bill.

ORSC Recommendations

The ORSC recommend all of the following regarding H.B. 96:

1) Recommend approval of the transfer of the governance and administration of the Ohio Deferred Compensation Program to the Board of the Ohio Public Employees Retirement System;
2) Recommend approval of provisions removing precinct election officials as "public employees" for purposes of the law governing PERS;
3) The "As Reported by Senate Finance" version of the bill includes an ORSC recommendation to exclude the state retirement systems and the ORSC as a "state agency" in R.C. 125.184; and
4) The "As Reported by Senate Finance" version of the bill includes ORSC recommendations on a previous version of the bill regarding school district income tax withholding, amending the following:
    a. Delay of the requirements to January 1, 2027 (from previous version of January 1, 2026), to allow the systems time to properly implement the bill's provisions; and
    b. Removal of tax commissioner rulemaking authority over the state retirement systems.
5) Recommend disapproval of amendments to R.C. 3309.011 that would remove state retirement system coverage to any person providing school health services to a child with a disability and who is employed and paid by an entity that has contracted with a school district for the following reasons:
    a. The proposal is directly contrary to the long-standing policy of opposing Social Security coverage of Ohio's state and local employees;
    b. The proposal is done without the necessary modifications of the state's "Section 218 Agreement" to expand Social Security coverage to Ohio's state and local employees;
    c. The proposal would prevent a large number of SERS members from retiring from SERS; and
    d. The proposal would be done without any type of grandfathering of existing SERS members.

Regarding Provision Related to "Employer Pick-Up"

The ORSC has traditionally been neutral on employer pick-up arrangements as public policy. However, should the employer pick-up prohibition remain in the bill, the ORSC would recommend that the provision be delayed to negate any effect on current collective bargaining agreements/employment contracts.